



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

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Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

Date =

State =

Dear

This is in reply to your ruling request dated January 30, 2006 and amended on February 18, 2011 and February 21, 2012, regarding the proper treatment of certain transactions you wish to conduct under the Internal Revenue Code ("Code").

FACTS

You are a private non-operating foundation organized as a non-profit corporation on Date under the laws of the State. You were formed to receive charitable contributions and to use these funds for charitable, educational, religious, scientific, and literary purposes.

You state that you will engage a Management Company to provide certain professional services to you. You state that the Management Company is 100% owned and controlled by related entities, and is therefore a disqualified person as defined in § 4946(a) of the Code. You further state that Management Company will be compensated for the services it provides based on the value of the assets it manages for you. You state that the amount charged by the Management Company will be significantly less than the fair market value of such services if you were buying the services on the open market, as benchmarked by data from an independent third party.

You state that you will engage a Management Company to provide you with the following professional services:

- Investment services, including investment manager selection, asset allocation and rebalancing services, review and payment of investment manager fees, performance monitoring, reporting of value and performance;
- Accounting and tax services, including monthly financial statement preparation, bill paying, and tax return preparation, financial audit coordination, consulting on business and tax issues.

## RULING REQUESTED

You have requested the following ruling:

Whether the fees paid by you to the Management Company for the enumerated professional services (i.e., investment, accounting and tax) are considered personal services within the meaning of §§ 4941(d)(2)(e) and 53.4941(d)-3(c)(1) of the foundation regulations, and whether such payments will constitute acts of self-dealing.

## LAW

Section 4941 of the Code imposes an excise tax on each act of self-dealing between a disqualified person and a private foundation.

Section 4941(d)(1) of the Code provides that the term "self-dealing" means, in part, any direct or indirect: (1) furnishing of goods, services, or facilities between a private foundation and a disqualified person.

Section 4941(d)(2)(E) of the Code provides that except in the case of a government official, the payment of compensation (and the payment or reimbursement of expenses) by a private foundation to a disqualified person for personal services which are reasonable and necessary to carrying out the exempt purpose of the private foundation shall not be an act of self-dealing if the compensation (or payment or reimbursement) is not excessive.

Section 53.4941(d)-2(d)(1) of the Foundation and Similar Excise Tax Regulations ("foundation regulations") provides that except as provided in subparagraph (2) or (3) of that paragraph (or § 53.4941(d)-3(b)), the furnishing of goods, services, or facilities between a private foundation and a disqualified person shall constitute an act of self-dealing. This subparagraph shall apply, for example, to the furnishing of goods, services, or facilities such as office space, automobiles, auditoriums, secretarial help, meals, libraries, publications, laboratories, or parking lots.

Section 53.4941(d)-3(c)(1) of the foundation regulations provides that, in general the payment of compensation (and the payment or reimbursement of expenses, including reasonable advances for expenses anticipated in the immediate future) by a private foundation to a disqualified person for the performance of personal services which are reasonable and necessary to carry out the exempt purpose of the private foundation shall not be an act of self-dealing if such compensation is not excessive. For purposes of this subparagraph the term "personal services" includes the services of a broker serving as agent for the private foundation, but not the services of a dealer who buys from the private foundation as principal and resells to third parties. This paragraph applies without regard to whether the person compensated is an individual. For rules with respect to the performance of general banking services, see § 53.4941(d)-2(c)(4).

Section 53.4941(d)-3(c)(2) of the foundation regulations provides examples of personal services that fall into the exception to self dealing which include: legal services, investment counseling services, and general banking services.

## ANALYSIS

Section 4941 of the Code imposes an excise tax on acts of self-dealing between a private foundation and a disqualified person. You state that the Management Company is a disqualified person with respect to you, and that you will engage the Management Company to provide you with certain professional services.

You propose to engage the Management Company to furnish you with investment and accounting services. Furnishing of services between a private foundation and a disqualified person are acts of self-dealing under §4941(d)(1)(C).

However, the foundation regulations and the Code provide exceptions to the prohibition on furnishing services between a private foundation and disqualified persons. §§ 4941(d)(2)(E) and 53.4941(d)-3(c). Payment of compensation to a disqualified person by a private foundation for the performance of personal services which are reasonable and necessary to carry out the exempt purpose of the foundation will not constitute self-dealing if the compensation is not excessive.

The foundation regulations define personal services to include the services of a broker serving as agent for the private foundation, but not the services of a dealer who buys from the private foundation as principal and resells to third parties. § 53.4941(d)-3(c). The foundation regulations also provide the following examples of additional personal services which are reasonable and necessary to carry out the exempt purpose of a private foundation: legal services, investment counseling services, and general banking services. § 53.4941(d)-3(c)(2).

Investment services are specifically characterized as permissible personal services in the regulations. Therefore, under the proposed transaction, the fees that you will pay to the Management Company for investment services, including investment manager selection, asset allocation and rebalancing services, review and payment of investment manager fees, performance monitoring, reporting of value and performance will not involve an act of self-dealing by virtue of the self-dealing exception set forth in §§ 4941(d)(2)(E) of the Code and 53.4941(d)-3(c)(2) of the foundation regulations.

Also under the proposed transaction, the Management Company will provide you with accounting and tax services which will include: monthly financial statement preparation, bill paying, tax return preparation, financial audit coordination, consulting on business and tax issues. Accounting and tax services are in the nature of legal services and general banking services and are essential to your exempt purpose. As such, they are considered personal services within the meaning of §§ 53.4941(d)-3(c)(1) and (2) of the foundation regulations. See Example 2 in § 53.4941(d)-3(c)(2). Thus, the payment of compensation for such personal services will not constitute an act of self-dealing so long as it is reasonable and not excessive.

## RULING

Accordingly, based on the information submitted we rule as follows:

The fees paid by you to the Management Company for the investment and accounting services will not constitute acts of direct or indirect self-dealing under §§ 4941 of the Code and 53.4941(d)-2(e) of the foundation regulations, so long as such fees are reasonable and not excessive. We are not ruling on whether the compensation paid to the Management Company is reasonable and not excessive.

This ruling will be made available for public inspection under § 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, Notice of Intention to Disclose. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. § 6110(k) (3) of the Code provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Ronald J. Shoemaker  
Manager, Exempt Organizations  
Technical Group 2

Enclosure  
Notice 437